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August 15, 1989

Mr.
Chief, Assessment Standards
Santa Cruz County Assessor's Office
Courthouse, 701 Ocean Street
Santa Cruz, CA 95060

Re: Assessability of Land Conveyed By Deed of Agricultural
Conservation and Easement of Development Rights

Dear Mr. :

This is in response to your letter dated July 17, 1989. You ask that we review a draft document entitled "Deed of Agricultural Conservation Easement and Development Rights". The document purports to convey property to Land Trust, a California nonprofit public benefit corporation (grantee) for the purpose of deeding the land to be held, perpetually in trust, as agricultural conservation land. You ask whether such a conveyance would cause the land to be exempt from property taxes, either under the provisions of the Williamson Act or some other property tax exemption provision.

I have reviewed the sample 17 page document you sent with your letter. The document purports to convey by deed a conveyance of an agricultural conservation easement and development rights. The conveyance is between private parties and does not involve government as a party. Such a conveyance between private parties does not in any way restrict the assessment of the property. Land use restrictions required to be recognized by the assessor are described in Revenue and Taxation Code 402.1. However, only those restrictions imposed upon the land by government are to be recognized. (See Carlson v. Appeals Board No. 1, 167 Cal.App.3rd 1004.) The County Assessor is not required to recognize restrictions imposed upon the land by a contract between private parties. (See Clayton v. Los Angeles County, 26 Cal.App.3rd 390.)

Mr. 1

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August 15, 1989

The conveyance does not create an exemption to property taxes by conveying the property to a nonprofit public benefit corporation. The property would be exempt from property taxes for nonprofit use only if the property was conveyed to an owner which qualified under the provisions of Revenue and Taxation Code 214. That section requires the property to be owned and used as narrowly specified for charitable purposes. There is no indication that the grantee, "Land Trust", qualifies as an owner under Section 214.

You told me during our telephone conversation on July 25 that certain land owners were conveying agricultural and development right easements to local government. In that event, our answer would be quite different. Because government would be a party to the conveyance, then the provisions of 402.1 would be satisfied and the legal restriction imposed upon the land by government must be recognized by the assessor for the determination of market value.

Very Truly yours,



Robert R. Keeling
Tax Counsel

RRK:mw
2610H

cc: Mr. Verne Walton
Mr. John Haggerty

M e m o r a n d u m

To: Ms. Glenna Schultz, MIC:64
Annotation Coordinator

Date: April 23, 2001

From: Lou Ambrose 
Staff Tax Counsel



Subject: *Validity of Annotation No. 535.0011 - Conservation Easements*

This is in reply to your email memo to Larry Augusta and Ken McManigal dated March 28, 2001 in which you inquire about whether the above-referenced annotation and opinion letter are valid in view of a subsequent amendment to Revenue and Taxation Code section 402.1. As explained below, we recommend that the annotation reflect the change in law effected by the amendment of section 402.1 because the annotation now conflicts with current law.

The annotation states, that the conveyance of an "Agricultural Conservation Easement" to a California non-profit public benefit corporation for the purpose of allowing the corporation to hold the property in trust perpetually as agricultural land does not constitute a restriction (within the meaning of section 402.1) to be taken into account when valuing the property to which the easement applies for property tax purposes, although conveyance of an easement to a governmental agency would constitute such a restriction. The annotated opinion letter was written in 1989 and, as the letter notes, at that time the law required that only land use restrictions imposed upon lands by governments were to be recognized by assessors for valuation purposes.

However, subdivision (a)(8) was added to section 402.1 in 1993, and it expanded the types of enforceable land use restrictions that shall be considered by assessors to include:

(8) A recorded conservation, trail, or scenic easement, as described in Section 815.1 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

Thus, the change in law effected by subdivision (a)(8) conflicts with the conclusion of the opinion letter. For that reason, we propose that a note be added to the annotation as follows:

Note: Stats. 1993, Ch. 1002, in effect January 1, 1994, added subdivision (a)(8) to section 402.1 which provides that an enforceable restriction to which the use

Ms. Glenna Schultz

April 23, 2001

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of land may be subjected and which an assessor must consider when assessing the land includes a recorded conservation easement, as described in Section 815.1 of the Civil Code, granted in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

LA:tr

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cc: Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Ms. Hadley Alger, MIC:64

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APR 24 2001
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PROPERTY TAXES